

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1734

IN THE MATTER OF:

Served August 5, 1977

Application of VINCENT FERGUSON )  
GIBSON T/A CONTINENTAL LIMOUSINE )  
for Temporary Authority to Conduct )  
Special Operations - TWA Flight Crews )

Application No. 1006

By Application No. 1006, filed July 22, 1977, Vincent Ferguson Gibson trading as Continental Limousine (Gibson), seeks temporary authority to transport flight crews of Trans World Airlines, Inc. (TWA), in special operations, over irregular routes, between Dulles International Airport, Chantilly, Va., on the one hand, and, on the other, the Shoreham Hotel, 2500 Calvert Street, N. W., and the Gramercy Inn, 1616 Rhode Island Avenue, N. W., both in the District of Columbia, restricted to service in vehicles with a seating capacity of 15 passengers or less (including the driver). One-way, per capita rates would be \$2.50 for transportation in a 15-passenger van or \$3 for transportation in an 8-passenger limousine. Applicant operates two each of such vehicles.

The instant application corresponds to Application No. 986 for a certificate of public convenience and necessity, now pending before the Commission. Two other related proceedings, Formal Complaint No. 77-2, Executive Limousine Service, Inc. v. Vincent Ferguson Gibson, and Application No. 994 of Executive Limousine Service, Inc., are also pending. The Commission hereby takes official notice of the evidence and arguments therein.

The records in the above-noticed proceedings amply demonstrate that TWA flight crews have a need for motor carrier transportation between the sought termini and that they are willing to use applicant's service at the per capita rate of \$2.50. There is no evidence concerning either applicant's need for a \$3 rate or the willingness of potential riders to pay such a charge. The evidence further discloses that Gibson has been performing the subject service without appropriate authority for several months. Whether the rendering of such service constitutes a willful and knowing violation of the provisions of the Compact and the Commission's rules, regulations and orders thereunder is a matter at issue in the above-noticed proceedings.

In support of this application, Gibson contends that temporary authority should be granted pendente lite. Gibson recognizes that a grant of temporary authority creates no presumption that corresponding permanent authority will be granted. Gibson's counsel states that he has contacted representatives of

Atwood's Transport Lines, Inc., Beltway Limousine Service, Inc., Greyhound Airport Service, Inc., and Washington Metropolitan Area Transit Authority, and none of these carriers opposes the application. A review of the operating rights of other certificated carriers reveals that no one holds authority duplicating that sought herein, except as set forth below.

Executive Limousine Service, Inc. (Executive), filed a protest to the application on July 26, 1977, asserting that it is ready, willing and able to enlarge its service in order to serve the Shoreham Hotel and Gramercy Inn, and also contending that Gibson is unfit to receive a grant of temporary authority. Executive, as pertinent, is authorized to conduct special operations between Dulles International Airport, on the one hand, and, on the other, four hotels in the District of Columbia, but not the Shoreham Hotel and the Gramercy Inn. Executive also holds charter authority pursuant to contract to transport TWA aircraft crews between the sought termini, but, by the terms of its contract with TWA, Executive may transport only international crew personnel and employees. Accordingly, a restriction limiting Gibson to the transportation of domestic aircraft crews would suffice to protect Executive's interest herein.

The Compact, Title II, Article XII, Section 4(d)(3) authorizes the Commission to grant temporary authority where there is an immediate and urgent need for service and no carrier service capable of meeting such need exists. The Commission finds that, with respect to domestic flight crews, the statutory criteria have been met.

The Commission further notes that the evidence of record in the above-noticed proceedings raises serious questions about applicant's fitness, willingness and ability to conform to the provisions of the Compact and the rules, regulations and orders of the Commission. The Commission has always considered the issue of fitness in temporary authority applications as to safety, compliance with the law, capacity to provide service and any other aspect of fitness deemed material in a particular proceeding. However, unlike proceedings in which a certificate of public convenience and necessity is sought, fitness is not a separate statutory criterion, and evidence of unfitness is weighed in light of the urgency of the expressed public need. Here, because the records clearly reflect that innocent parties may be left without transportation service should this application be denied, the Commission shall defer further consideration of this issue until such time as the corresponding permanent application and complaint proceeding are submitted for disposition. The granting of temporary authority, however,

gives no rise to any presumption regarding applicant's fitness, and, of course, raises no presumption that permanent authority will be granted. 1/

Accordingly, the application shall be granted in part and denied in part. In the absence of evidence supporting a \$3 per person fare for limousine service, only a \$2.50 rate will be authorized. Applicant will be required to file its WMATC Temporary Authority Tariff No. 1, an appropriate certificate of insurance, and a statement of compliance with Commission Regulation 68 (governing the identification on motor vehicles) within five days from the date of service hereof.

**THEREFORE, IT IS ORDERED:**

1. That Vincent Ferguson Gibson trading as Continental Limousine be, and is hereby, granted temporary authority to transport domestic aircrews of Trans World Airlines, Inc., in special operations, over irregular routes, between Dulles International Airport, Chantilly, Va., on the one hand, and, on the other, the Shoreham Hotel, 2500 Calvert Street, N. W., Washington, D. C., and the Gramercy Inn, 1616 Rhode Island Avenue, N. W., Washington, D. C., restricted to service in vehicles with a seating capacity of 15 passengers or less (including the driver).

2. That Application No. 1006 in all other respects be, and it is hereby, denied.

3. That Vincent Ferguson Gibson trading as Continental Limousine be, and is hereby, directed to file with the Commission within five days from the date of service hereof (a) a certificate of insurance, (b) two copies of WMATC Temporary Authority Tariff No. 1, and (c) a notarized statement of compliance with Commission Regulation 68.

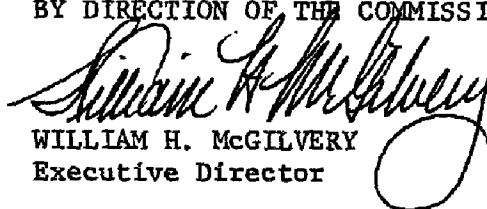
4. That upon compliance with the requirements of the last preceeding paragraph, the temporary authority granted herein shall become effective on the sixth day following the date of service hereof, August 15, 1977, and shall continue in effect until November 31, 1977, unless otherwise ordered by the Commission.

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1/ Gibson holds a contract with the Federal Aviation Administration which purports to authorize the services temporarily approved herein, and that contract has become an issue in Civil Action No. 76-1210, Executive Limousine Service, Inc. v. The Honorable Brock Adams, et al., now pending in United States District Court. The granting of temporary authority herein is not to be construed as an approval of said contract or as recognition of the rights purportedly granted thereby.

5. That unless compliance is made by Vincent Ferguson Gibson trading as Continental Limousine with the requirements set forth in the second preceeding paragraph within five days from the date of service hereof, or such further time as may be authorized by the Commission, the grant of temporary authority made herein shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director

SHANNON, Commissioner, dissenting:

I would deny this application for temporary authority and proceed as directly as possible to a final determination on the basis of the evidence adduced in Application Nos. 986 and 994, and Formal Complaint No. 77-2.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

NOTICE OF CORRECTION  
TO  
ORDER NO. 1734

IN THE MATTER OF:

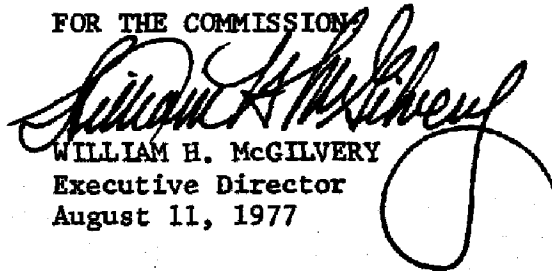
Served August 5, 1977

Application of VINCENT FERGUSON )  
GIBSON T/A CONTINENTAL LIMOUSINE )  
for Temporary Authority to )  
Conduct Special Operations - TWA )  
Flight Crews )

Application No. 1006

The above-captioned order, at page 3, ordering paragraph no. 4, specified an incorrect date of "November 31, 1977." The correct date is November 30, 1977. Please attach this correction notice to your copy of Order No. 1734.

FOR THE COMMISSION

  
WILLIAM H. MCGILVERY  
Executive Director  
August 11, 1977